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May 19, 2004

via Hand Delivery
Ms. Beth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

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MAY 19 2004

PUBLIC SERVICE
COMMISSION

Re: *Ballard Rural Telephone v. Jackson Purchase Rural Electric Cooperative Corporation, Case No. 2004-00036*

Dear Ms. O'Donnell:

Enclosed for filing with the Public Service Commission of the Commonwealth of Kentucky (the "Commission") is one original and ten (10) copies of Ballard Rural Telephone Cooperative Corporation Inc.'s Responses to the Public Service Commission's First Data Requests and one original and ten (10) copies of Ballard Rural Telephone Cooperative Corporation, Inc.'s Responses to Jackson Purchase Energy Corporation's Interrogatories and Requests for Production of Documents in the above-styled case.

Thank you, and if you have any questions with regard to this matter, please call me.

Very truly yours,

DINSMORE & SHOHL LLP



Holly C. Wallace

HCW/rk
Enclosure

cc: Mr. Harlon Parker (w/enclosure)
Amy Dougherty, Esq. (w/enclosure)
John E. Selent, Esq. (w/o enclosure)

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PUBLIC SERVICE
COMMISSION

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

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PUBLIC SERVICE
COMMISSION

In the Matter of:

**BALLARD RURAL TELEPHONE
COOPERATIVE CORPORATION, INC.**)
Complainant)

v.)

**JACKSON PURCHASE RURAL
ELECTRIC COOPERATIVE
CORPORATION**)
Defendant)

Case No. 2004-00036

**RESPONSES OF BALLARD RURAL TELEPHONE
COOPERATIVE CORPORATION, INC. TO
THE PUBLIC SERVICE COMMISSION'S
FIRST DATA REQUESTS**

For its response to the First Data Requests of the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural"), by counsel, hereby responds as follows.

DATA REQUESTS

1. Refer to page 3, lines 14-15, of the Verified Prefiled Direct Testimony of Harlon E. Parker ("Parker Testimony"). When did Ballard Telephone first provide Internet service to its customers?

RESPONSE: June 1997.

2. Refer to the answers to Questions 20, 30 and 31 of the Parker Testimony. Explain the reasoning for Ballard Telephone's belief that the rates charged to it under the 1954 agreement

with Jackson Purchase Energy Corporation (“Jackson Purchase”) should have been tariffed and filed with the Commission.

RESPONSE: Pursuant to KRS 278.040, the Commission has exclusive jurisdiction over the rates and services of regulated utilities within the Commonwealth of Kentucky. The Commission is charged with ensuring that the rates are fair, just and reasonable, and that the services are adequate, efficient and reasonable. KRS 278.030. In addition, the Commission has jurisdiction over any claims that a utility is discriminating with regard to rates or services. KRS 278.170. Service is defined as “any practice or requirement in any way relating to the service of any utility” KRS 278.010 (13). The broad statutory definition of service includes the provision of space for pole attachments.¹ *Order*, Case Nos. 8040 and 8090, August 26, 1981 p. 8. In so holding, the Commission established jurisdiction over pole attachment rates. Subsequently, pursuant to 47 U.S.C. § 224 (c)(2), the Commission certified to the Federal Communications Commission that “it has assumed jurisdiction over and regulates pole attachment rates, terms and conditions of jurisdictional utilities.” *Certification*, Case Nos. 8040 and 8090, January 28, 1988, p. 2.

Upon appeal of the Commission's order of August 26, 1981, the Kentucky Court of Appeals affirmed the Commission's jurisdiction over pole attachment rates. “We must agree with the finding by the Commission that the rates charged for pole attachments are ‘rates’ within the meaning of KRS 278.040, and that the pole attachment itself is a ‘service’ within the meaning of the statute.” *Kentucky CATV Association v. Volz*, 675 S.W.2d 393, 396 (Ky. App. 1983). The court recognized that the Commission has jurisdiction over pole attachment rates

¹ The Telecommunications Act of 1996 (the "Act") expressly provides that an attachment by a telecommunications service provider is a pole attachment within the meaning of the Act. 47 U.S.C. § 224 (a)(4).

with regard to utilities. “We have already concluded that the Kentucky statutes authorize the Public Service Commission to exercise jurisdiction over pole attachment agreements with utilities in Kentucky. The Public Service Commission is the natural state agency to consider the interests of cable television subscribers as well as the interests of the consumers of various utility services. The Commission has accepted that task.” *Kentucky CATV Association v. Volz*, 675 S.W.2d at 397 (emphasis added).

In accordance with the Commission's Orders and *Kentucky CATV Association v. Volz*, Jackson Purchase is charging Ballard Rural a rate for service when it charges Ballard Rural for placing attachments on its poles. Because Jackson Purchase is charging Ballard Rural a rate for service by a regulated utility, and because no utility may discriminate with regard to rates or services, Jackson Purchase's pole attachment rates should be tariffed and filed with the Commission.

3. Refer to Answer 19 of the Testimony of Richard Sherrill filed on behalf of Jackson Purchase. Describe Mr. Parker's understanding of the terms of the agreement between Ballard Telephone and Jackson Purchase in August 2003.

RESPONSE: There was no agreement. Ballard Rural entered into settlement discussions with Jackson Purchase, but the discussions were unsuccessful. Jackson Purchase's proposed pole attachment rates remain too high.

4. Refer to the Verified Prefiled Direct Testimony of James K. Sharpe (“Sharpe Testimony”) in Administrative Case No. 19000251. In that case, the Commission found that cable television providers (“CATV”) were customers of the regulated pole-owning utilities, not joint users, because they did not own their poles. In the case of Jackson Purchase and Ballard

Telephone, each having attachments on poles owned by the other, explain why one entity, Ballard Telephone, should be considered a customer rather than a joint user.

RESPONSE: There is a substantial disparity in the bargaining power between Jackson Purchase and Ballard Rural. Ballard Rural is on 3,292 poles belonging to Jackson Purchase, whereas Jackson Purchase is on 170 utility poles belonging to Ballard Rural. Because of this substantial disparity, Jackson Purchase has what amounts to monopoly power. Jackson Purchase abused this monopoly power when it issued an ultimatum to Ballard Rural, forcing Ballard Rural to choose between accepting a 460 percent increase in pole attachment rates, or removing its attachments from 3,292 poles belonging to Jackson Purchase. This great disparity in ownership of poles and bargaining power places Ballard Rural at the mercy of Jackson Purchase. In any event, Jackson Purchase has given notice that Ballard Rural must remove its attachments from Jackson Purchase's poles. Therefore, the parties no longer have a pole attachment agreement.

5. Refer to the answers to Questions 5 and 6 in the Sharpe Testimony. Clarify whether it is Mr. Sharpe's position that the Commission should exert jurisdiction over all joint-use rates, or whether it should exert such jurisdiction only when the joint use parties are unable to agree on the terms and rates under which they will share poles.

RESPONSE: Pursuant to KRS 278.040, the Commission has exclusive jurisdiction over the rates and services of regulated utilities within the Commonwealth of Kentucky. The Commission is charged with ensuring that the rates are fair, just and reasonable, and that the services are adequate, efficient and reasonable. KRS 278.030. In addition, the Commission has jurisdiction over any claims that a utility is discriminating with regard to rates or services. KRS 278.170. Service is defined as "any practice or requirement in any way relating to the service of any utility" KRS 278.010 (13). The broad statutory definition of service includes the

provision of space for pole attachments.² *Order*, Case Nos. 8040 and 8090, August 26, 1981 p. 8. In so holding, the Commission established jurisdiction over pole attachment rates. Subsequently, pursuant to 47 U.S.C. § 224 (c)(2), the Commission certified to the Federal Communications Commission that “it has assumed jurisdiction over and regulates pole attachment rates, terms and conditions of jurisdictional utilities.” *Certification*, Case Nos. 8040 and 8090, January 28, 1988, p. 2.

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The Commission has jurisdiction over the facts in this case, and it is the Commission's duty to exercise that jurisdiction. “[T]he PSC has jurisdiction over joint pole use agreements and has a duty to determine whether rates are just and reasonable.” *Electric and Water Plant*

² The Telecommunications Act of 1996 (the “Act”) expressly provides that an attachment by a telecommunications service provider is a pole attachment within the meaning of the Act. 47 U.S.C. § 224 (a)(4).

Board of the City of Frankfort v. South Central Bell Telephone Company, 805 S.W.2d 141, 144 (Ky. App. 1990) (*citing* *Kentucky CATV Association v. Volz*, 675 S.W.2d 393 (Ky. App. 1983)). Jackson Purchase abused its monopoly power and discriminated against Ballard Rural when it issued an ultimatum to Ballard Rural forcing it to choose between a 460% increase in rates or vacating 3,292 of its poles. The Commission asserted jurisdiction over pole attachment rates to protect entities such as Ballard Rural and their customers from this abuse of monopoly power. "Because of their [the utility companies'] monopoly status, such services should be regulated in the public interest." *Order*, Case Nos. 8040 and 8090, p. 8. Therefore, the Commission should exercise jurisdiction in the facts in this case.

6. Has either Jackson Purchase or Ballard Telephone begun removing any pole attachments from the other's poles?

RESPONSE: No.

7. Ballard Telephone asserts in its complaint that Jackson Purchase's collection of pole attachment rates from Ballard Telephone pursuant to the General Agreement for Joint Use of Wood Poles ("Joint Use Agreement") constitutes a violation of KRS 278.170 and that the rates should be refunded. Does Ballard Telephone believe that its collection of pole attachment rates from Jackson Purchase pursuant to the Joint Use Agreement also constitutes a violation of KRS 278.170 and that the rates should be refunded to Jackson Purchase? Explain.

RESPONSE: Yes, because pole attachment rates are rates with respect to a utility service, and the appropriate remedy is a refund.

8. Refer to the answer to Question 32 of the Parker Testimony. Mr. Parker states that Ballard Telephone believes that a reasonable pole attachment rates would be either the rates established pursuant to the 1954 Agreement or the tariffed pole attachment rates of Jackson

Purchase applicable to CATV providers. State whether Ballard Telephone believes that the fair, just, and reasonable rate for Ballard Telephone to charge Jackson Purchase for pole attachments is either the rate established by the 1954 Agreement or Ballard Telephone's tariffed CATV rate. Explain.

RESPONSE: At this time, yes.

9. Provide a calculation of CATV Pole Attachment Rates using Ballard Telephone's 2003 Annual Report as calculated in the current tariff?

RESPONSE: See Exhibit 1.

Respectfully submitted,



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**COUNSEL TO BALLARD RURAL
TELEPHONE COOPERATIVE
CORPORATION, INC.**

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing was served by mailing a copy of the same via First Class United States Mail, postage prepaid, to the following individuals this 19th day of May, 2004:

W. David Denton
Denton & Keuler, LLP
555 Jefferson Street
P.O. Box 929
Paducah, KY 42002-0929

G. Kelly Nuckols
President & CEO
Jackson Purchase Energy
Corporation
2900 Irvin Cobb Drive
P.O. Box 4030
Paducah, KY 42002-4030



**COUNSEL TO BALLARD RURAL
TELEPHONE COOPERATIVE
CORPORATION, INC.**

Ballard Rural Telephone Cooperative Corporation, Inc.
 C.A.T.V. Pole Attachment Rates Cost Justification
 2003 Rates Based on Calculations Made in the Current Tariff

I. Weighted Average Cost of 30' and 35' Poles:

	Quantity	Cost		Undepr. Portion	=	Net Cost
30' Poles	1,095	155,044.57	X	0.566	=	87,755.23
35' Poles	320	46,613.90	X	0.566	=	26,383.47
	<u>1,415</u>	<u>201,658.47</u>				<u>114,138.69</u>
Average Cost/Pole =	114,138.69	Divided by	1,415	=		80.66

II. Weighted Average Cost of 40' and 45' Poles:

	Quantity	Cost		Undepr. Portion	=	Net Cost
40' Poles	70	18,154.87	X	0.566	=	10,275.66
45' Poles	5	1,381.81	X	0.566	=	782.10
	<u>75</u>	<u>19,536.68</u>				<u>11,057.76</u>
Average Cost/Pole =	11,057.76	Divided by	75	=		147.44

III. C.A.T.V. Carrying Charge Justification
 Per 2003 Annual PSC Report

Depreciation.....				=		5.60%
Taxes.....	Operating Other Taxes	203,665.00				
	Net Telephone Plant	15,622,198.00		=		1.30%
Administration and Overhead.....	Customer Operations Exp.	463,806.00				
	Corporate Operations Exp.	612,887.00				
		<u>1,076,693.00</u>				
	Net Telephone Plant - Beg.	14,637,830.00				
	Net Telephone Plant - End	15,622,198.00				
		<u>30,260,028.00</u>	Divided by	2	=	15,130,014.00
		<u>1,076,693.00</u>				
		15,130,014.00		=		7.12%
Maintenance.....	Poles	42,718.00				
	Poles Asset - Beg.	536,179.00				
	Poles Asset - End	539,113.00				
		<u>1,075,292.00</u>	Divided by	2	=	537,646.00
		<u>42,718.00</u>				
		537,646.00		=		7.95%
Rate of Return.....	Interest on Funded Debt	715,437.00				
	Long Term Debt - Beg.	10,563,981.00				
	Long Term Debt - End	12,219,656.00				
		<u>22,783,637.00</u>	Divided by	2	=	11,391,818.50
		<u>715,437.00</u>				
		11,391,818.50		=		6.28%
	1.5 Times	6.28%		=		9.42%
Total Annual Carrying Charge.....						31.39%

IV. Calculation of Charge for Two Party Poles:

80.66	X	78.00%	X	31.39%	X	0.1818	=	<u>\$3.59</u>
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V. Calculation of Charge for Three Party Poles:

147.44	X	78.00%	X	31.39%	X	0.0759	=	<u>\$2.74</u>
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